

Claimant alleges injury occurred on September 6, 1993. An Employer's Report of Accident was filed within 28 days thereafter. Claimant last received medical treatment November 16, 1993. Therefore, claimant must show that she filed written claim within 200

days of November 16, 1993 for her claim to have been timely filed. Claimant relies upon an Employee Incident/Accident Report dated September 6, 1993 to constitute written claim for compensation. Claimant also testified she completed another document about a week after her injury similar to her April 24, 1996 Form 15 Claim for Workers Compensation. However, respondent placed into evidence its entire personnel file for claimant and no such document exists therein.

Respondent contends that the Employee Incident/Accident Report does not satisfy the statutory written claim requirement. The Appeals Board disagrees. The Kansas Supreme Court in *Ours v. Lackey*, 213 Kan. 72, 515 P.2d 1071 (1973) held that a written claim need not take any particular form. In order to decide whether a document constitutes a written claim, the court is to examine the facts and circumstances surrounding the writing to determine what the parties had in mind. Whether claimant had in mind compensation for her injury when the Employee Incident/Accident Report was prepared is specifically addressed in the preliminary hearing testimony, as follows:

"BY MR. SLAPE:"

"Q. The employee incident/accident report, there are [sic] some handwriting at the top of that report. Whose handwriting is that?"

"A. Mine."

"Q. And why did you fill out this -- the top of this report?"

"A. My worker asked me to fill this out along with the other claim form."

"Q. Who is -- what do you mean by worker, your supervisor?"

"A. Yes, sir."

"Q. When you filled out this form as well as the companion form did you intend that your medical would be paid?"

"A. Yes, sir."

"Q. Were you following instructions as to the paperwork that was to be paid so could you get your medical treatment?"

"A. Yes sir."

"Q. As well as any other benefits?"

"A. Yes, sir."

In his June 6, 1996 Order, the Administrative Law Judge found that "The claimant testified she gave written notice of claim to the Respondent soon after this acknowledged work related injury. Her testimony is credible and uncontradicted. Timely written claim was made." The Appeals Board gives some deference to the Administrative Law Judge's finding concerning the credibility of the claimant. In addition, as the Administrative Law Judge points out, the claimant's testimony concerning what she had in mind when the document was prepared is uncontroverted. While respondent is correct that an incident report alone generally will not satisfy the statutory requirement for a written claim for compensation, we find that the document coupled with the claimant's testimony satisfies claimant's burden of proof that it was in fact a claim.

We do not reach the merits of respondent's second issue regarding the admissibility of the Form A Employer's Report of Accident because it is not relevant to our determination of the compensability issue. Thus, it was an interlocutory ruling by the Administrative Law Judge which is not appealable at this stage of the proceedings. See, K.S.A. 44-534a(a)(2), as amended, and K.S.A. 44-551(b)(2)(A), as amended.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated June 6, 1996 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Kim R. Martens, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director